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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1945

No. 751.

COMMISSIONER OF INTERNAL REVENUE,

Petitioner,

vs.

AMELIA E. COLLINS,

Respondent.

On Certificate From the Circuit Court of Appeals for the Ninth Circuit on Petition for Review of Decision of the Tax Court of the United States.

Application by Respondent to Require Entire Record to be Sent Up.

JOSEPH D. BRADY,
W. L. NOSSAMAN,
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Counsel for Respondent.

January 25, 1946.

Parker & Company, Law Printers, Los Angeles. Phone TR. 5206.

TABLE OF AUTHORITIES CITED.

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Application by Respondent to Require Entire Record to be Sent Up.

To the Honorable Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

Now comes Amelia E. Collins, respondent in the above entitled cause, and respectfully represents:

(1) That by Certificate dated January 9, 1946, the Circuit Court of Appeals for the Ninth Circuit certified the following question to this Court:

> A taxpayer is a transferee by distribution of property from an estate in probate, which estate owes an estate tax to the United States but which is neither assessed nor paid at the time of distribution. Thereafter the federal estate tax is returned and the tax assessed. Such taxpayer pays the entire tax, including the interest thereon, from taxpayer's personal funds. Is such a taxpayer, in his return of gross

income for the year in which such interest is paid, entitled to deduct from such gross income the amount of such interest in computing his income tax liability for that year?

(2) The above question relates solely to the right of the respondent taxpayer to deduct from gross income interest upon an estate tax deficiency which she, a transferee of estate property, paid. Both in the Tax Court and in the Circuit Court of Appeals the taxpayer contended that the liability upon the estate tax debt to the United States was her indebtedness, and that such liability arose not only because she *received* the estate (that is, was a transferee) but because she, a fiduciary, *distributed* the estate without paying the federal estate tax, thereby incurring a personal liability under the former R. S. 3467, now 31 U. S. C., 1940 ed., Section 192.

The brief of the Commissioner before the Ninth Circuit set out, under the heading "Statutes Involved," not only the "transferee" provisions (I. R. C. Sec. 900(a)(1), (2), and (e); 26 U. S. C. 1940 ed., Sec. 900), but also the "fiduciary" provisions (R. S. 3466, 31 U. S. C. 1940 ed., Sec. 191; and R. S. 3467, 31 U. S. C. 1940 ed., Sec. 192.) All of these statutory provisions are pertinent to the determination of the single issue, namely, the right of respondent to deduct the amount of interest, which accrued, in its entirety, *after* the distribution of her deceased husband's estate by her as executrix to herself as sole distributee.

(3) We respectfully submit that "the whole matter in controversy" (Rule No. 37) in this case cannot be disposed of without the consideration by this Court of the additional question referred to under (2) above. In this

connection we respectfully call attention to the fact that if the Court should decide the question certified to it by the Circuit Court of Appeals in favor of the Government, there would still remain for disposition by this Court or by the Circuit Court of Appeals the question, which is of great importance in the administration of the revenue statutes, arising under the former R. S. 3467. The resolution of this question in favor of the taxpayer would require affirmance of the decision of the Tax Court, irrespective of the decision on the transferee question.

(4) Immediately upon receipt of the Circuit Court of Appeals' Certificate to this Court, we, as counsel for respondent taxpayer, called the attention of the Circuit Court of Appeals to the above matters by letter to the Honorable William Denman dated January 12, 1946. In response to this letter we received from Judge Denman a letter dated January 15, 1946, which so far as relevant for the present purpose reads as follows:

> "There is a hesitancy on the part of the courts of appeal to certify an entire case. In a very large percentage of certifications of questions, *when accepted,* the Supreme Court grants such a petition by a litigant as is described in paragraph 2 of its Rule 37." (Emphasis Judge Denman's.)

(5) The excerpt just quoted from Judge Denman's letter shows, we believe, the reasons which actuated the Court in certifying only one of the questions pertaining to a single issue and not the entire case. We respectfully

submit that the case is peculiarly one in which it is desirable and we believe necessary that the entire record be sent up to this Court in order that it may consider and decide the whole matter in controversy, as provided in Rule 37. In accordance with that Rule, we submit herewith a certified copy of the entire record.

We respectfully request that the Court make an order requiring the entire record to be sent up.

Respectfully submitted,

JOSEPH D. BRADY,
W. L. NOSSAMAN,
Counsel for Respondent.

January 25, 1946.